STATE OF MICHIGAN

COURT OF APPEALS

BARTON D. BARTELLI and MARJEAN E. BARTELLI,

Plaintiffs-Appellants,

v

GERALD D. MOTTES and MARY ANN MOTTES,

Defendants-Appellees.

UNPUBLISHED
May 29, 2003

No. 240999
Marquette Circuit Court
LC No. 01-038453-CH

Before: Smolenski, P.J., and Griffin and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order entered after a bench trial finding no cause of action. This case arose from a dispute over the scope of an easement across defendants' land. We affirm.

This Court reviews a trial court's findings of fact in a bench trial for clear error and reviews de novo the trial court's conclusions of law. *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). A trial court's findings of fact are clearly erroneous if "although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

Plaintiffs first contend that because an implied easement by necessity only arises after a conveyance occurs that creates a landlocked parcel of property, *Schmidt v Eger*, 94 Mich App 728, 733; 289 NW2d 851 (1980), the fact that the original common grantors reserved an easement in the original conveyance did not preclude the court from declaring the existence of an easement by necessity arising *after* the original conveyance. We disagree.

The trial court properly found that the original grantors split the property, deeded one parcel to defendants, and thereby left the remaining property landlocked; however, the grantors remedied this situation in the deed of conveyance itself by reserving a right of ingress and egress "over and across existing roadways in common with adjacent owners." This language resulted in the creation of an express easement. *Forge v Smith*, 458 Mich 198, 205; 580 NW2d 876 (1998) ("In order to create an express easement, there must be language in the writing manifesting a clear intent to create a servitude"). Because an express easement existed that permitted plaintiffs

to access their property, plaintiffs failed to demonstrate the necessity that is a prerequisite to the judicial declaration of an implied easement of necessity.

Implied easements may arise in two ways: they may be implied from necessity or they may be implied from quasi-easements. *Schmidt, supra* at 732-733. The easement implied by necessity occurs when a landowner divides his property and, in so doing, creates a landlocked parcel. Because the owner of the landlocked parcel has no way to access his landlocked property, the court will imply an easement by necessity to permit access. Such an easement requires a showing of strict necessity; that is, no other alternative means of accessing the property exists. *Id.* at 732.

The other type of judicially implied easement is the easement implied by grant or reservation. *Id.* at 733. This type of easement arises when the common grantor already has a right of way – or quasi-easement – that permits access to parcels of contiguous property that are subsequently severed. The easement by implied grant occurs where the common grantor divides his property and the grantee obtains the landlocked parcel without any easement being specified in the conveyance; in such circumstances, the court will judicially imply that the grant contained an easement to permit access to the grantee's landlocked property. *Chapdelaine, supra* at 172. The easement by implied reservation covers the situation where the common grantor divides his or her property, retains the landlocked parcel, but fails to explicitly reserve an easement for access in the conveyance. *Id.* at 172-173. In both cases, the party asserting the right to the easement need only demonstrate that the easement is reasonably necessary. *Id.* at 173.

This case does not involve either type of implied easement because the original conveyance contained an *express* easement for access to the grantor's property. In this case, the clearly expressed intent of the grantor was to continue the pre-existing easement in its then-current form.

Plaintiffs do not claim that they were denied access to their property by the existing right of way across defendants' property; rather, they claim that this easement was insufficient to permit them to *drive* to their property using motor vehicles. However, plaintiffs failed to present any authority that permitted them to require the owner of the servient estate to expand the existing express easement for the convenience of the dominant estate. "[A] mere statement without authority is insufficient to bring an issue before this Court." *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

We therefore conclude that the trial court correctly reasoned that plaintiffs had failed to demonstrate the necessity for a judicially implied easement because an easement permitting access to their property was already expressly created by the document of conveyance.

Plaintiffs next argue that even if the trial court correctly concluded that the original conveyance contained an express easement, the trial court erred by ruling that it could not find that current conditions required the creation of a judicially implied easement to permit vehicular traffic. Again, we disagree.

Because the record supports the trial court's factual finding that the "existing roadway" at the time of the 1967 conveyance was a pedestrian footpath and because plaintiffs do not dispute this finding, that finding is not clearly erroneous and is therefore binding on this Court. *Walters,*

supra at 456. Acceptance of plaintiffs' argument would result in the unilateral modification by plaintiffs of the easement that was granted to their property by virtue of the 1967 conveyance that severed defendants' property from the common grantors' retained property – the property that in 1994 was conveyed to plaintiffs. "The rights of an easement holder are defined by the easement agreement." *Schadewald v Brulé,* 225 Mich App 26, 38; 570 NW2d 788 (1997), citing *Great Lakes Gas Transmission Co v MacDonald,* 193 Mich App 571, 575; 485 NW2d 129 (1992). As this Court stated in *Schadewald, supra* at 35-36:

> An easement is the right to use the land of another for a specified purpose. *Bowen v Buck & Fur Hunting Club,* 217 Mich App 191, 192; 550 NW2d 850 (1996). An easement does not displace the general possession of the land by its owner, but merely grants the holder of the easement qualified possession only to the extent necessary for enjoyment of the rights conferred by the easement. *Morrill v Mackman,* 24 Mich 279, 284 (1872).
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> Once granted, an easement cannot be modified by either party unilaterally. *Douglas v Jordan,* 232 Mich 283, 287; 205 NW2d 52 (1925); *Tittiger v Johnson,* 103 Mich App 437, 443; 303 NW2d 26 (1981). The owner of an easement cannot materially increase the burden of it upon the servient estate or impose thereon a new and additional burden. *Delaney v Pond,* 350 Mich 685, 687; 86 NW2d 816 (1957).

At the time of the 1967 conveyance, the only right of way across defendants' property was a pedestrian footpath. There was apparently no development anywhere on the peninsula and the only "traffic" on the peninsula was foot traffic by people taking walks out to the tip of the peninsula. The grantors' use of the formulation "existing roadways" in the 1967 deed indicates clearly that the intent of the grantors was to preserve access to the balance of the peninsula (after the conveyance of defendants' lot) in the manner it was then being exercised – that is, pedestrian access. That is what the parties clearly agreed to. "The use of an easement must be confined strictly to the purposes for which it was granted or reserved." *Delaney v Pond*, 350 Mich 685, 687; 86 NW2d 816 (1957).

Plaintiffs' modification of the easement from a pedestrian pathway to a roadway for motor vehicles would constitute a material increase of the burden on the servient estate. *Schadewald, supra* at 36. The right of plaintiffs – and other nearby neighbors – to *walk* across defendants' land in order to enjoy the balance of the peninsula would be converted to the significantly more onerous burden of permitting motor vehicles to traverse the land on their way up the peninsula. This Court therefore concludes that the trial court correctly ruled that it could not interpret the clear language of the 1967 deed to include a right to vehicular traffic that was not then in existence or to imply an expansion of the original easement to include motor vehicle traffic.

Plaintiffs finally contend that the trial court violated the statute of frauds[1] and the parole evidence rule by considering factors outside the written document to explain the terms used in the document. We again disagree.

Although plaintiffs mention the statute of frauds in conjunction with the parole evidence rule, they make no argument that the statute of frauds was violated. "[A] mere statement without authority is insufficient to bring an issue before this Court." *Wilson, supra* at 243.

Affirmed.

/s/ Michael R. Smolenski
/s/ Richard Allen Griffin
/s/ Peter D. O'Connell

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[1] The statute of frauds, MCL 566.106, provides in relevant part:

> No estate or interest in lands . . . shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing.

Additionally, MCL 566.108 provides in relevant part:

> Every contract for the leasing for a longer period than one [1] year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof be in writing, and signed by the party by whom the lease or sale is to be made, or by some person thereunto by him lawfully authorized in writing[.]